

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Authorizing Permissive Use of the “Next)	GN Docket No. 16-142
Generation” Broadcast Television Standard)	
)	

**REPLY COMMENTS AND INITIAL REGULATORY FLEXIBILITY ANALYSIS
RESPONSE OF
NTCA–THE RURAL BROADBAND ASSOCIATION OF**

I. INTRODUCTION

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to the Notice of Proposed Rulemaking (“NPRM”)² and Initial Regulatory Flexibility Analysis (“IRFA”)³ in the above-captioned proceeding. The record confirms NTCA’s initial assertion that the Federal Communications Commission (“Commission”) should separate and maintain a distinct line between MVPD carriage of Advanced Television Systems Committee (“ATSC”) 3.0 signals on the one hand and the retransmission consent regime on the other hand, until retransmission consent reform is accomplished. As multiple parties attest, this is particularly important in the case of small MVPDs; the retransmission consent process in its current form could be leveraged to compel such smaller firms to bear unknown costs and suffer other harms to accommodate carriage of ATSC 3.0 signals prematurely, notwithstanding the

¹ NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA’s service provider members are full service rural local exchange carriers (“RLECs”) and broadband providers. Approximately 75 percent serve as multichannel video programming distributors (“MVPDs”) using a variety of technologies in sparsely populated, high-cost rural markets.

² *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, GN Docket No. 16-142, Notice of Proposed Rulemaking, FCC 17-13 (rel. Feb. 24, 2017).

³ *Id.*, IRFA, Appendix B.

NPRM's goal of voluntary experimentation on the part of broadcasters. In addition, small MVPDs and their customers must not be subject to onerous new expenses to maintain access to the ATSC 1.0 signals, at the same level of quality, that they have today. The rules must either ensure small MVPDs do not lose access to current signals, or include provisions for small MVPDs to be compensated for any expenses needed to maintain their current level of service to customers.

II. CARRIAGE OF ATSC 3.0 SIGNALS BY SMALL MVPDS SHOULD NOT BE ACCOMPLISHED THROUGH THE RETRANSMISSION CONSENT PROCESS UNTIL RULES ARE REFORMED

Multiple parties demonstrate the harms that MVPDs, particularly small ones that lack economies of scale or market power, as well as their customers, would face if carriage of ATSC 3.0 signals can be forced through the flawed retransmission consent process.⁴ As Consumers Union *et. al.* notes, “[t]he retransmission consent system can, and has, been abused to compel carriage of signals other than core broadcast content.”⁵ More specifically, DISH states that “[b]roadcasters are seeking to impose ATSC 3.0 in current retransmission consent negotiations, undermining claims that a transition would be ‘voluntary.’”⁶

Verizon further explains:

“Carriage of ATSC 3.0 transmissions will not be a choice for MVPDs if the Commission permits broadcasters to use their leverage in lopsided retransmission consent negotiations to compel carriage of ATSC 3.0 signals before consumer demand and market circumstances warrant...[therefore] the Commission should

⁴ See, e.g., comments of the American Cable Association (“ACA”) at 10-13; the American Television Alliance (“ATVA”) at 18-29; AT&T at 16-19; Consumers Union, Public Knowledge, and New America’s Open Technology Institute (“Consumers Union *et. al.*”) at 14-17; Dish Network LLC (“DISH”) at 2-6; The Independent Telephone & Telecommunications Alliance (“ITTA”) at 6-10; Midcontinent Communications at 5-6; NCTA-The Internet & Television Association (“NCTA”) at 18-21; Verizon at 8-11; and WTA-Advocates for Rural Broadband (“WTA”) at 7-12.

⁵ Consumers Union *et. al.* at 14.

⁶ DISH at 2.

ensure that this is truly a consumer- and market-driven transition, rather than one prematurely forced by regulation or broadcasters.”⁷

Also, ACA describes how broadcasters have even more ability to coerce small MVPDs, which a broadcaster does not need “to reach the majority of its audience, while the small MVPD needs the broadcaster in order to provide ‘must-have’ programming to its subscribers.”⁸

Furthermore, there is no effective remedy for violations under the current retransmission consent rules – rendering the “voluntary” compulsory as a result. As ITTA correctly observes:

“[T]he existing retransmission consent complaint process is not a feasible avenue for relief for smaller and new entrant MVPDs. Besides being prohibitively costly and time consuming, the ability to pursue regulatory relief is hampered by mandatory non-disclosure provisions typically found in retransmission consent negotiations and agreements. These provisions prohibit MVPDs from revealing the contract rates, terms and conditions that are subject to dispute. This lack of transparency has become a valuable tool in the broadcasters’ arsenal to silence smaller MVPDs.”⁹

And NCTA points out that there is a risk “of additional blackouts if broadcasters refuse to allow carriage of ATSC 1.0 unless a cable company also carries ATSC 3.0.”¹⁰ Consequently, as NTCA asserted in its initial comments,¹¹ ATSC 3.0 carriage must not be incorporated into the current retransmission consent process for small MVPDs; only after reforms inject transparency and market forces in this content carriage regime should a debate over incorporation of ATSC 3.0 even be considered.

⁷ Verizon at 2-3.

⁸ ACA at 10.

⁹ ITTA at 7-8.

¹⁰ NCTA at 21.

¹¹ NTCA at 3-6.

III. MVPDS SHOULD RETAIN ACCESS TO THE SAME QUALITY OF SIGNALS THAT THEY AND THEIR CUSTOMERS RECEIVE TODAY, WITHOUT BEING COMPELLED TO INCUR ADDITIONAL COSTS AS A RESULT OF THE ATSC 3.0 TRANSITION

The record highlights extensive concerns regarding costs (*see* Section IV, *infra*) associated with maintaining consumer access to quality ATSC 1.0 signals that may be simulcast along with ATSC 3.0 signals, particularly those that may be relocated from the original transmission site.¹² As NCTA points out, a single station cannot transmit both an ATSC 1.0 signal and 3.0 signal simultaneously, so stations adopting ATSC 3.0 will need to either “(1) find a ‘host’ station to transmit their ATSC 3.0 signal and use their original station to continue to transmit the ATSC 1.0 signal, or (2) find an alternate ‘host’ for their ATSC 1.0 simulcast stream while converting their original signal to ATSC 3.0.”¹³ NCTA continues:

“In either case, the Commission must ensure that the ATSC 1.0 station continues to provide service to the original community of license and DTV coverage area and that its ATSC 1.0 simulcast stream does not become degraded. Consumers in the community of license have the right to be served... Moving to a different ATSC 1.0 host transmitter outside the existing community of license and DTV coverage area, while the ATSC 3.0 signal remained in its current location, could force an operator to purchase new equipment, change its receive antenna or make other accommodations, all without the benefit of a reimbursement fund. It would cause consumer disruption and confusion, as they might lose access to the station’s ATSC 1.0 simulcast stream without upgrading their television sets. The Commission must ensure that its rules protect operators and consumers against being saddled with these costs... To avoid these costs and burdens, the over-the-air linear ATSC 1.0 simulcast stream must be required to serve the same service area as it serves before the launch of ATSC 3.0, transmitting from a station licensed to the same community of license – not the vague ‘substantially similar’ concept advanced by the broadcasters (or the requirement in the draft rule to arrange for service from another station ‘substantially covering such station’s community of license’).”¹⁴

NTCA concurs that MVPDs, especially small MVPDs for whom any cost increase constitutes a significant burden, need to retain access to quality signals. Any alternative

¹² NPRM, ¶ 23.

¹³ NCTA at 12.

¹⁴ *Id.* at 12-13 (citation omitted). *See also* ACA at 2-9; ATVA at 29-35; Verizon at 4-5.

arrangements that may be necessary, along with any attendant costs, should be the responsibility of the broadcaster(s) demanding the changes.¹⁵ Indeed, this concept applies to any step towards ATSC 3.0 implementation; it is the broadcaster's choice to make that change, and even if that choice cannot be disputed or denied, the consequences of that unilateral choice should not shift to third parties. As ATVA states, these costs are ultimately borne by MVPDs' subscribers,¹⁶ who should not have to bear the burden, much less a disproportionate one, of the transition.

Simply put, MVPDs and consumers (whether they receive signals via an MVPD or over the air) should neither experience, nor have to incur costs to mitigate, any signal loss or degradation that may result from a broadcaster's unilateral decision to adopt ATSC 3.0.¹⁷ As commenting parties rightly highlight,¹⁸ and broadcasters and their allies freely admit,¹⁹ broadcasters may have incentive to simulcast lower-quality signals in the ATSC 1.0 format during the transition. This should be prevented to ensure viewer access to the same quality of signals they have today; certainly, the intent of the Commission in facilitating a voluntary transition to ATSC 3.0 is *not* to result in lower-quality services for consumers. Again, any costs that small MVPDs may incur to maintain access to the quality of signals that consumers enjoy today should be covered by broadcasters or other interested parties that are choosing to cause those costs and reaping any benefits from the choice to transition.

¹⁵ ACA at 2-10; ATVA at 39-40.

¹⁶ ATVA at 39. *See also*, Consumers Union *et. al.* at 5-7.

¹⁷ NPRM, ¶ 11, ¶ 24.

¹⁸ *See e.g.*, AT&T at 2-9; ACA at 5-9; ATVA at 35-38; Consumers Union *et. al.* at 9; DISH at 9-11.

¹⁹ America's Public Television Stations, The AWARN Alliance, The Consumer Technology Association and The National Association of Broadcasters at 5-10.

IV. THE INITIAL REGULATORY FLEXIBILITY ANALYSIS IS DEFICIENT AS IT PROVIDES NO ESTIMATES OF EXPENSES OR BURDENS THAT SMALL MVPDS MAY ENCOUNTER AS A RESULT OF ATSC 1.0 SIMULCASTING

In response to the NPRM's IRFA, NTCA's initial comments noted the need to exclude ATSC 3.0 carriage from the retransmission consent process for small MVPDs that lack negotiating leverage due to unbalanced retransmission consent rules and an absence of economies of scale and market power, until such time as the rules can be reformed.²⁰ In addition, the record in this proceeding (*see* Section III, *supra*) has established that simulcasting of ATSC 1.0 signals that are transmitted from a new location could impose significant costs upon MVPDs, which would be disproportionately burdensome to small providers. While the IRFA solicits comment on "a number of issues related to the implementation of local simulcasting,"²¹ it provides no cost or burden estimate upon which to comment, or that might serve as the basis of any cost-benefit analysis. Rather, the IRFA transfers this responsibility to the public, merely noting that the NPRM seeks comment on various issues, "with the goal of easing the economic burdens of the new rules and policies on small entities."²²

Despite this deficiency, the record demonstrates the significant economic burdens MVPDs of all sizes potentially face. Verizon estimates costs of approximately \$15,000 - \$20,000 for each relocated ATSC 1.0 signal, noting that the actual costs may be higher.²³ It is reasonable to assume that small companies, operating in remote markets without the scale and scope of Verizon, would encounter costs that are higher still. ATVA further notes that in rural areas, which are primarily served by small MVPDs, additional fiber feeds or other alternative transport

²⁰ NTCA at 8-9.

²¹ IRFA, ¶ 3.

²² *Id.*, ¶ 28.

²³ Verizon at 9.

methods could also be required, rendering the costs even more exorbitant.²⁴ WTA provides an example where fiber costs alone could reach \$2,000,000.²⁵

The IRFA notes that the Regulatory Flexibility Act “requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach.”²⁶ While the IRFA considers a limited “alternative approach of prohibiting MVPD carriage of ATSC 3.0 signals through retransmission consent” to ease burdens on MVPDs,²⁷ there is no mention of steps or alternatives considered to estimate and account for the costs and burdens that may be imposed on small MVPDs that would then be required to carry relocated simulcast ATSC 1.0 signals. Similarly, there is no estimate or discussion of potential costs MVPDs might incur to prevent their customers from receiving lower-quality signals than they currently enjoy. It is incumbent upon the Commission to account for these costs and, preferably, decline to issue new rules that would impose them. If these costs cannot be avoided, the Commission must craft effective rules that require broadcasters to bear the responsibility of taking steps to keep quality signals available, or provide for funding mechanisms to ensure that new rules will not result in new burdens for small MVPDs and their customers.

V. CONCLUSION

In initial comments, NTCA noted that one-fourth of its members report that 90 percent or more of the customers in their service areas cannot receive any over-the-air broadcast signals, and must rely upon MVPD services in order to receive any broadcast signals at all.²⁸ Similarly, DISH notes that “[b]roadcaster service areas have shrunk over time to the detriment of OTA

²⁴ ATVA at 9-10.

²⁵ WTA at 4.

²⁶ IRFA, ¶ 24.

²⁷ *Id.*, ¶ 26; *see also* NTCA at 8-9. The Commission will also need to account for the costs and burdens faced by small MVPDs and their customers at whatever point in the future small MVPDs may be required to carry ATSC 3.0 signals.

²⁸ NTCA at 6 (citation omitted).

viewers.”²⁹ As rural consumers are now more dependent upon MVPDs for any broadcast signal at all, it is imperative that the transition to ATSC 3.0 not impose any additional costs or burdens upon the MVPDs that serve them (and already pay a fee for the privilege of providing free transport and transmission to the broadcaster), nor should the transition result in any degradation or loss of signal.

For the reasons outlined above, the carriage of ATSC 3.0 signals should be distinct and separate from the retransmission consent process, at least in the case of small MVPDs, until such time as retransmission consent can be reformed to inject market forces and transparency into the process. In addition, any rule changes should ensure that small MVPDs, and the rural subscribers who depend on them for access to broadcast signals, maintain access to the quality of signals they currently receive, and will not have additional costs or burdens foisted upon them as a result of the unilateral choice of the broadcaster to undertake the ATSC transition. If this is not possible, broadcasters should arrange for alternative methods to maintain quality signal access, or an effective cost recovery mechanisms must be crafted to ensure that small MVPDs and their

²⁹ DISH at 8-9.

customers are not subject to increased costs and/or lack of access to quality signals as a result of new rules.

Respectfully submitted,



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